

Pregnancy at Work:
Research to explore experiences of employers in small firms
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Prepared For Acas and COI Communications

By Cragg Ross Dawson

November 2004

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Prepared by Cragg Ross Dawson

For Acas
Brandon House
180 Borough High Street
London SE1 1LW

and:

COI Communications
Research Unit
Hercules Road
London SE1 7DU

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Foreword from Rita Donaghy, Chair of ACAS

I am pleased to introduce this research report commissioned by Acas to explore employers experiences of handling maternity situations.

The research was stimulated following discussions with the Equal Opportunities Commission (EOC) regarding their comprehensive review of maternity rights and culminating in their interim report *Tip of the Iceberg*, published in September 2004.

Like the EOC, Acas recognises that the employers face very real challenges in handling maternity and for small and medium sized enterprises these challenges are especially acute. It is for his reason that we focused our research on the experiences of small firms dealing with maternity situations.

Pregnancy at Work highlights the paradox facing employers in small firms who may be supportive of the principle of legislation protecting women's employment during maternity, but who find the costs and practicalities of coping with arrangements challenging. The research provides rich insight into the precise difficulties: their sometimes patchy awareness of the women's rights, and their apparent lack of awareness of their own rights; and the challenges they face in meeting both the quantifiable and less tangible costs associated with maternity leave, and especially providing maternity cover.

Acas is constantly striving to maximise use of our services to the widest range of audiences. The SME sector is of particular concern for us at present, and this research provides valuable data for us concerning the information and advice needs of this particular sector in relation to maternity issues.

The report has received a warm welcome from policy officials and researchers at the EOC, and we hope that it will add to their understanding of this complex area of public policy.

Rita Donaghy
November 2004

1. BACKGROUND AND OBJECTIVES

1.1 Background

The Advisory, Conciliation and Arbitration Service (Acas) commissioned this qualitative research study in order to record and explore the experiences of employers in small firms in handling maternity issues within their workplaces.

The study was intended to further advance the work begun under the recent Acas re-profiling research exercises which are focused on gaining a better understanding of segments of the market.

It was also required to provide evidence to contribute to the current Equal Opportunities Commission (EOC) review of maternity rights, the first recommendations of which are set out in *Tip of the Iceberg*, published in September 2004. Acas consulted with the EOC in developing the proposals to conduct this research.

1.2 Research objectives

The main aims of the research were as follows:

- to gain a better understanding of the experiences, knowledge and challenges facing small firms when an employee becomes pregnant
- to assess employers' level of awareness of the legislation surrounding maternity cases
- to find out where employers seek advice and information in such circumstances, including experience and perceptions of Acas
- to elicit ideas to facilitate the smoother handling of maternity cases

The research was intended to explore employers' views of all aspects of handling maternity cases, from the period prior to the woman taking maternity leave right through to the return to work.

More specifically, the research looked at the following issues:

- employers' main concerns and challenges with regard to managing pregnancy at work
- the costs associated with handling maternity cases, including steps that could be taken to minimise these costs
- arrangements made for assessing health and safety prior to maternity leave
- what type of information and advice is needed and sought when an employee becomes pregnant and from what sources; how this information and support might be improved

- awareness, experiences and perceptions of Acas, including views on the possibility of Acas providing a mediation service in maternity cases
- employers' general views of employing women of child-bearing age

2. METHODOLOGY AND SAMPLE

2.1 Limitations of the study

It should be noted that this was a small-scale study intended to produce strategic insight into small employers' views and experiences with regard to maternity rights, rather than an exhaustive or statistically representative survey. Although the sample achieved a spread of industry sectors and a cross-section of companies of different size, it was not large enough to permit firm conclusions about these sub-groups. A research sample of 19 respondents creates a natural limit on the diversity and depth of experience represented.

It should also be emphasised that this study only sampled the views of employers, and only those who had recently experienced a maternity within their company.

2.2 Sample

The research comprised two 90 minute group discussions with employers, one with seven respondents and one with eight. The sample was structured as follows:

G1: small employers, Surrey
G2: small employers, Manchester

Due to problems with recruitment in Group 1, a further mini group discussion (four respondents) was conducted to supplement the research, as follows:

G3: small employers, London

Respondents were recruited according to the following criteria:

- **size of company:** all respondents represented companies employing between 5 and 50 staff; across the sample there was a spread of sizes within this range
- **industry sector:** the sample as a whole comprised a mix of industry sectors, including some female and some male dominated; the breakdown of the sample was as follows:

Group 1: 1 manufacture & distribution of catering equipment
 1 garden centre
 1 travel agent
 1 dental practice
 1 hotelier
 1 leisure centre
 1 florist

Group 2: 1 wholesale of household goods
 1 textiles
 1 healthcare security operations
 1 import and export of plastics

2 graphic design
1 beer importer
1 interior design

Group 3: 1 sale & manufacture of healthcare equipment
1 day-care centre
1 pharmacy
1 firm of architects

- **role:** all respondents were recruited as being responsible for determining their company's maternity policy and/or for managing pregnant employees; many respondents were the owners of their companies, while a minority had a Human Resources or general management function
- **experience of maternity:** all respondents had dealt with at least one instance of maternity in the last 18 months, and some with two or more

The fieldwork was conducted between 28th September and 5th October 2004. The researchers were Catherine Taylor and Tim Porter.

Copies of the recruitment questionnaire and topic guide are appended to this report.

3. SUMMARY AND CONCLUSIONS

3.1 General attitudes towards maternity

- 3.1.1 Maternity is unequivocally regarded as 'a problem' for small employers. Even among those who are broadly supportive of the law and committed to treating their pregnant employees fairly and generously, there was a view that maternity creates inescapable difficulties. Very small companies in particular are often completely unprepared for maternities, and experience near-panic when an employee announces she is pregnant; proprietors of such companies are often so focused on keeping their business afloat that they have little time or attention to spare for personnel issues.
- 3.1.2 There is a widespread belief that maternity legislation is becoming ever more biased towards the employee and, as a result, ever more burdensome for the employer. Two points should be noted, however: first, that this study sampled the views of employers only; second, that there were significant gaps in respondents' understanding of the current legislation, with the result that their views were not necessarily expressed from a position of knowledge (see point 5 below).
- 3.1.3 In the context of maternity, respondents tend to believe that all the rights are on the side of the employee, while all the responsibilities fall to them. When asked whether employees have any responsibilities towards their company, respondents tend either to be unaware of any or to play down their significance. For example, employers who were well-versed in employees' entitlements to maternity pay and leave were not necessarily aware of their own right to notice periods or evidence of ante-natal appointments. Others were aware of these rights but felt uncomfortable or hesitant in enforcing them.
- 3.1.4 This was reflected in respondents' maternity policies which, from the descriptions given, essentially constituted a basic outline of the employee's rights, with little or no reference to the rights of the employer. The majority of these employers had a written policy in place (although it should be noted that all had experienced a maternity recently and that this had usually been the catalyst for drawing up the policy). However, employers did not generally keep these policies up-to-date, revisiting them only when a member of staff became pregnant. Some saw no reason for having a policy at all, because their maternity provision went no further than that guaranteed by the legislation. Indeed, very few offered anything beyond the statutory entitlements, and then only in exceptional circumstances.
- 3.1.5 Some employers believe that what they see as a trend towards greater rights for the employee and more generous maternity provision will increasingly discourage employers from recruiting women of child-bearing age. A few acknowledge that their own companies already unlawfully discriminate in this way; some are unrepentant, while others regard this as a source of regret.
- 3.1.6 One other general criticism of the maternity legislation is that it is not always effective at separating 'good' employers from 'bad'. The complex

and detailed nature of the law means that even well-meaning employers can be in breach of their responsibilities because they overlook a technicality.

3.2 The key concerns and costs

3.2.1 The overriding problem for small employers in managing maternity is that of handling maternity leave. The absence of an employee for up to a year, coupled with the uncertainty of whether and when she will return to work, combine to produce a raft of interlocking costs and problems for small employers. Chief among these are:

- **making arrangements for when maternity leave will start and when the employee will return to work:** employers are uncertain of their rights and responsibilities in this area and often fail to make satisfactory formal arrangements
- **covering the employee's absence:** the dilemma of whether or not to hire a replacement, and whether the new employee should be temporary or permanent; the difficulty of finding a suitable replacement; the cost of recruitment; the time and cost involved in training a new member of staff; the problem of what to do with the replacement employee if the original employee returns to work; or, the costs and difficulties of choosing not to hire a replacement (resentment of other employees at having to take on more work, potential loss of business)

3.2.2 Managing other aspects of maternity was generally thought much less troublesome. In the period before maternity leave the most common problem was that of handling absences for ante-natal appointments. On the employee's return to work there were some reports of problems with absenteeism and agreeing flexible hours.

3.2.3 Health and safety was rarely raised spontaneously as a cause for concern, but it was clear that many of these employers were not fulfilling their responsibilities in this area. Most had not conducted a formal risk assessment, either because they were unaware of their duty to protect health and safety or because they thought that fulfilling this duty was largely a matter of 'common sense'. Many were concerned to discover not only that they were required by law to conduct an assessment, but also that they might have to suspend an employee on full pay if a risk were identified. Where formal assessments had been carried out, this was usually by employers working in more heavily regulated industries who were better aware of health and safety legislation generally.

3.2.4 The costs involved in handling maternity are not always easily defined. Some are quantifiable and can be significant, particularly for very small companies: chief among these are the cost of recruiting and training a replacement employee and the potential cost of maternity suspension on health and safety grounds (although no-one in this sample had experienced this). However, the unquantifiable 'time and trouble' costs of managing a pregnancy and losing an employee for up to a year are often considered a more significant problem for small businesses.

3.2.5 The majority of these employers were relatively well-informed about the basics of maternity legislation – length of leave, amount of pay, right to time off for appointments – but often had little detailed understanding of their rights and responsibilities.

3.2.6 The impact of this is difficult to judge and is likely to be variable. On the one hand, it seemed that many of these respondents had managed maternities to the satisfaction of both employer and employee without knowing the ins and outs of the legislation. On the other, it seems quite likely that some of these respondents' employees will have missed out on entitlements due to them, particularly with regard to health and safety, and that maternities could perhaps have run more smoothly had both parties been better informed of their rights and responsibilities.

3.3 What can be done to help employers?

3.3.1 Respondents found it difficult to suggest measures that could ease the burden of maternity for small businesses, short of a significant curtailment of the rights of pregnant employees. It should also be noted that by no means all of these employers would have welcomed such a change to the legislation.

3.3.2 Often, employers regarded the issue as essentially intractable: it was clear to most that a civilised society should make reasonable provision for new and expectant mothers to take time off work without jeopardising their employment; but it was thought equally clear that this will always cause problems for employers, particularly in smaller companies, and that very little can be done to change this.

3.3.3 A concrete recommendation suggested by respondents was an increase in government funding to help small companies cover specific costs, particularly those related to maternity suspension and the recruitment and training of staff to cover maternity leave. It was difficult for respondents to imagine what could be done to alleviate the less easily defined problems and costs associated with an employee's absence.

3.3.4 An improvement in the provision of information was largely thought unnecessary, since respondents found it easy to access detailed information quickly, chiefly via government websites. However, it would be well worth considering more active promotion of a maternity planning tool such as that provided by the Acas-run Tiger (Tailored Interactive Guidance on Employment Rights).

3.3.5 Although employers tended to believe that their information needs have largely been met, there were in fact clear gaps and misunderstandings in their knowledge. With this in mind, our feeling is that a more proactive distribution of information about rights and responsibilities to pregnant women and their employers could be helpful in alleviating some of the difficulties small companies face. As well as acting as a de facto maternity policy for small employers who do not have a written policy in place, we feel that this could also help to reassure employers that the legislation is not entirely biased against them, by drawing attention not only to their responsibilities but also their rights. The automatic distribution of such a

document may also make employers feel more comfortable and confident enforcing these rights.

- 3.3.6 The majority of respondents were amenable to using Acas as a provider of information and advice. The provision of an Acas mediation service to assist in situations where there is a dispute between parties concerning maternity was also discussed. Since none of the employers had experienced maternity situations resulting in some form of grievance or dispute, none felt able to speculate on their likely use of such a service. However, equally there was no in-principle opposition to this idea.

4. MAIN FINDINGS

4.1 Overview

4.1.1 General attitudes towards pregnancy at work

The employers in this sample represented a wide variety of attitudes towards maternity legislation and managing pregnancy at work, ranging from a minority who supported the law and sought to treat new and expectant mothers as generously as possible, through to a minority at the other extreme who expressed open hostility towards pregnant women and strongly resented the responsibilities placed on employers.

In spite of this range of views, however, it should be emphasised that, even among the most positive, pregnancy and maternity were regarded as essentially a problem for small employers. Almost no-one in this sample, many of whom were women and mothers themselves, saw any actual positives in a member of staff becoming pregnant, unless the individual was a poorly performing employee who chose not to come back to work; in an ideal world, a small company would experience no maternities at all. That is not to say that there were no respondents who saw benefits for themselves as well as for their employees in making maternity a positive and supportive experience; simply that, from the small employer's point of view, maternity is something that is 'dealt with' rather than welcomed.

Employers' views of maternity were eloquently articulated by the way they would respond to the announcement that an employee was pregnant. Even the most supportive admitted, somewhat guiltily and regretfully, that their first response would be negative.

SO, IF ONE OF YOUR STAFF COMES TO YOU AND SAYS, 'I'M PREGNANT', WHAT IS YOUR FIRST REACTION?

"Nightmare!"

"Expense."

Group 2: small employers, Manchester

"I think I went into a state of panic."

Group 1: small employers, Surrey

"Your heart sinks... It's the hassle factor. You are delighted for the individual, but it is a hassle and another thing you have to worry about."

Group 3: small employers, London

The factors contributing towards this sense of negativity largely reflect those identified in the EOC's investigation (Tip of the Iceberg, 2004). For the most critical, these included: a sense of hostility towards employment law generally and a belief that employers should not be responsible for bearing maternity costs; a desire to operate as free from regulation as possible; and a feeling that smaller companies bear the burden of employment law (including maternity legislation) disproportionately.

"I don't want to stray off your topic, but I don't think you can look at this one topic in isolation – there are

all the other issues that are affecting small businesses. Working time related, paid leave, minimum wages and then maternity, it is one thing after another and it really adds up."

Group 1: small employers, Surrey

"If you are a very small company then everything is relative. You have got fewer people to cover that person, less money theoretically, and at the end of the day you are going to be the one shelling out for no return."

Group 1: small employers, Surrey

The majority of respondents were less opposed to the principle of employers sharing the burden of managing pregnancy at work, but nevertheless believed that the legislation increasingly favoured the employee to the detriment of the small business. These respondents considered maternity provision too generous and the employee too protected and believed that any changes to the law were likely to continue this trend. This way of thinking about maternity legislation suggests that employers regard their interests and those of employees as essentially opposed.

"There is so much protection for the employee. The employer now is totally exposed. Obviously there are unscrupulous employers just like there are unscrupulous landlords, but there are also a lot of very honest companies. I think the employer is very exposed."

Group 3: small employers, London

In practice, employers tended to believe that all the rights were on the side of the employee while all the responsibilities were on the side of the employer. When asked directly whether employees had any responsibilities towards their company in the context of maternity, respondents tended either to be unaware of any or to play down their significance.

WHAT ABOUT EMPLOYERS' RIGHTS? IS THERE ANYTHING EMPLOYEES HAVE TO DO?

"I don't see anything. There is nothing there to protect us."

"Apart from inform you that they are pregnant."

Group 3: small employers, London

"There is some duty of decency on them as well, isn't there? There is some onus on them to communicate. They can't just wander away and think, 'Well I'll turn up 12 months later'."

"Legally they can!"

Group 2: small employers, Manchester

"They have to let you know by letter when they are going off and when they are coming back. But the

notice they have to give to you when they are coming back is so short. It is not long enough to give notice to the person you've employed to take their place."

Group 3: small employers, London

This issue was exacerbated by the fact that respondents were often reluctant to exercise what rights they had, because of an unwillingness to damage the trusting relationship between themselves and their staff, or because they thought this was somehow 'not the done thing'.

"Ante-natal appointments. I know they have to have time off, but I'm not 100% sure about full pay.

Some have more appointments than others, and mine never show me the appointment cards at all."

"You can't really ask, that's the thing."

YOU DO HAVE A RIGHT TO ASK TO SEE THEM IF YOU WANT TO.

"I didn't know that."

"But it's a trust thing, as well. You don't want to ask."

Group 3: small employers, London

On the whole, those who considered themselves good employers did not necessarily feel that maternity legislation recognised them as such. Even when they went out of their way to make generous provision for their pregnant employees, they were still in danger of falling foul of the law because they had overlooked a technicality.

"Even if you've done what you think is right, if you haven't ticked all those bloody boxes and written everything down and have witnesses and everything else, you can get slaughtered."

Group 1: small employers, Surrey

Some had felt forced to change their maternity policy or working practices almost against their will in order to protect themselves from allegations of discrimination.

"All the legislation has changed... For every good side there is going to be a down side. We've started doing three-monthly appraisals now, even for girls that have worked for us for ten years. We are having to lose the 'Aren't we lovely to work for?' thing and adopt the mega-nasty boss role. I'm doing all sorts of things I don't want to do, just to protect myself in case this legislation slaps me in the face."

Group 3: small employers, London

"I think you've got to find the balance. I'm sure we're all good employers, and I do think about my staff, but you get to the stage where you think you've got to protect yourself."

Group 3: small employers, London

Finally, it is worth noting that the attitudes of female employers who had had children themselves appeared slightly different from the rest of the sample. These respondents were more likely than others to think about the legislation from a dual perspective: as employees as well as employers. In their employee guise they often welcomed the increased rights and benefits afforded to pregnant women, but as employers they shared the same concerns as others about the burden placed on small businesses.

4.1.2 Employing women of child-bearing age

As a result of these perceptions about legislative bias towards the employee and increasingly generous maternity provision, many thought that employers were becoming less likely to employ women of child-bearing age. Those most positive about maternity rights regretted this, believing that it would defeat the object of equal opportunities legislation by resulting in greater discrimination against women.

"I think what the government needs to remember is that all these extra laws and clauses are supposed to be for the protection of the employee, but what happens is, the more prohibition they bring in, they more they frighten off the employer. If there is a whole new barrage of legislation they will think, 'Who needs it? I will just take a bloke'. So it backfires, it doesn't help the women because they won't get the jobs."

Group 3: small employers, London

Several employers in this sample were prepared to acknowledge that they had discriminated in this way in the past, including some who appeared to treat their pregnant employees fairly and generously. Others denied doing this themselves, but thought it likely that 'companies in their industry' were probably discriminating against women and that this was likely to happen more in future. Some who admitted discrimination regretted acting in this way but felt that they were forced to do so: the costs and problems associated with maternity had become too great, and they had to put the viability and profitability of their business first.

"It will be a shame if things do change to be like that, because it's discrimination, but you are almost being forced into it. You get to the point where you don't want to take that risk anymore – it's too much aggravation. That's a horrible position to be put into."

Group 1: small employers, Surrey

"We went out and employed someone else [to replace her] and, I hate to say this because I'm the only female within the management, but they wanted the new person to be a man so that this couldn't happen again."

Group 2: small employers, Manchester

"I would be lying if I said it wasn't a consideration."

Group 3: small employers, London

The definition of a 'woman of child-bearing age' was thought to be growing ever wider now that women are having children later, and this only increased the number of people who could potentially be subject to discrimination.

"You look at the age of the woman you're employing."

AND WHAT AGE ARE YOU THINKING OF?

"Anywhere from 25 to 40."

Group 2: small employers, Manchester

4.1.3 What are the key concerns and costs?

Section 2 of these findings discusses in detail respondents' views on the various aspects of maternity legislation and managing pregnancy at work. However, it is worth taking an overview of employers' concerns at this point in order to highlight their priorities, which were strikingly consistent across all three focus groups.

For almost everyone in this sample, the overriding concern in the context of maternity is the period of maternity leave itself, and the difficulties arising from the absence of an employee for up to a year. As identified in the EOC research (Tip of the Iceberg, 2004), small businesses found it very difficult to cover an employee's maternity leave, a problem compounded by uncertainty as to whether or not the woman in question would return to work. These difficulties are discussed in detail below (section 2.3), but the importance of this issue and its dominance of the group discussions cannot be over-emphasised.

Respondents also frequently referred to the 'cost' of maternity as a key problem for employers, particularly for very small businesses. Specific costs are discussed in the detailed sections below, but, as a general point, it is worth noting that 'cost' is a loosely defined term that is used by employers to cover not only quantifiable costs, such as placing a recruitment advertisement for a maternity replacement, but also less easily defined expenses such as the 'time cost' involved in training and over-seeing replacement staff or the cost of business and clients lost on account of reduced capacity or a temporary employee's lack of knowledge and experience.

WHAT ABOUT OTHER DIRECT COSTS?

"You can't take their car away for six months, for example. They are direct costs – maybe softer costs, but they are still there."

"Hardware [for an employee working at home], there is a cost there."

"It is more of a time cost than a financial cost."

Group 3: small employers, London

These unquantifiable costs along with the general hassle and concern involved in managing maternity were typically regarded as the source of greater problems than the more clearly-defined expenses.

"It's hidden costs and they're not particularly easy to quantify. It's the cost of having to recruit a new person, the time it takes to get that person trained up, and that's a money-time issue. It's other people having to step in and do things that they didn't otherwise have to do, and that can have a cost in many different ways. It goes on and on."

Group 1: small employers, Surrey

A distinction also needs to be drawn between the difficulties that employers have directly experienced, and the potential problems that concern respondents but have not actually arisen. For example, some respondents were hostile towards maternity legislation largely because they thought it enabled employees to 'take advantage' of their employer, even if they had not experienced this themselves.

"To me the critical thing is that the length of ordinary maternity leave is increasing and pregnant employees are entitled to 26 weeks maternity leave regardless of how long they have worked for their employer. Work for one day, get six months off."

Group 1: small employers, Surrey

"My big fear as an employer is that I will take somebody on, that doesn't have loyalty to the company yet, and then they say they're pregnant... They know legally you can't get rid of them, so there is always that worry... You have trained them up for a three or four month period and they are going to disappear out of the door for 12 months."

Group 3: small employers, London

4.2 Detailed views on managing pregnancy

4.2.1 Maternity policy

The majority of these employers had a formal, written maternity policy in place, even though very few offered anything beyond the statutory benefits. This is perhaps to be expected given that all had recently experienced a maternity within their company. In most cases the policy had been drawn up in response to a specific instance of maternity, either by respondents themselves or by someone else in the business, typically the company accountant.

"I got the accountants to look it all up because I never expected it to happen, so it was a bit of a shock, really."

Group 2: small employers, Manchester

Respondents saw the purpose of having a maternity policy as being to set in stone the extent of the employee's rights and to ensure that there was no ambiguity regarding their entitlement. In this way, employers could be sure that they were 'covered' and that both employer and employee had a fixed point of reference. There appeared to be much less emphasis on the rights and responsibilities of the employer, for example the right to be given notice of an employee's maternity leave or of her return to work. From the descriptions given, most policies comprised a relatively basic outline of the employee's rights with regards to all the main aspects of maternity, most importantly pay and leave.

For one or two respondents the catalyst for drawing up a maternity policy had not been a specific maternity. One had an obligation to maintain an up-to-date policy as part of his company's membership of a quality assurance scheme. Another had decided, in response to a mailing from Business Link, that her company's employment policy as a whole was out of date and had drawn up a new handbook. Employers who had suffered a bad experience in the past with regard to personnel issues were also more likely to have a written policy in place.

"We have a policy in our handbook. That was brought into play about 4 years ago."

WAS THAT BECAUSE OF A MATERNITY HAPPENING?

"No, that was just a general thing. I wanted a handbook for the company so that was included in it."

Group 1: small employers, Surrey

It was clear that most employers were not in the habit of updating their maternity policies regularly. Many took the view that, given how few maternities a small company is likely to experience, and given how often the legislation changes, there is little point in keeping a maternity policy permanently up-to-date. Instead, the announcement of a pregnancy would act as a trigger for whoever was in charge of personnel issues to look up the latest legislation and change the policy accordingly.

In some cases employees themselves were involved in this process, since they were better versed in the legislation than their employer. Where the baby was planned, it was thought natural that the woman would have looked into the detail of her entitlements in advance in order to plan her leave and finances accordingly, and the internet had made it significantly easier for employees to do this. While some employers were glad that the employee herself could help them update their policy, others were suspicious that employees who had 'armed' themselves with their rights had done so in order to gain the upper hand over their employer and extract the maximum benefits possible.

"Our policy is out of date, but the young lady who is expecting at the moment, when she went to get all the information she needed she actually got a leaflet for me as well. So although our policy isn't up to date I have got all the information there because she has given it to me."

Group 1: small employers, Surrey

"She was my manager and I'd just taken her on, and she laid down the law to me about her rights."

Group 1: small employers, Surrey

A minority of employers, particularly those representing smaller companies, did not have a written policy in place. This seemed to have more to do with the nature of the company generally and its typical way of working than with attitudes to maternity specifically. For example, one employer who had experienced several maternities in recent years and appeared to be largely supportive of the law saw no need to have a written policy because her staff contracts stated that the company would offer only the statutory maternity rights.

"I have a contract for each member of staff and I abide by the statutory maternity rules. I don't have a maternity policy."

Group 3: small employers, London

Very few of the employers in this sample offered anything beyond the statutory maternity entitlements. Some saw no benefit for themselves in doing so, while others claimed that they would have liked the flexibility to offer something extra but did not have the budget available. In those instances where employers were offering something more, this was not as a general policy but only in the case of exceptional employees whom the company was unwilling to lose.

Example: A graphic design company with 14 employees offers full pay during maternity leave for key members of staff, as a recognition for good work and as an incentive for employees to return to the company at the end of their leave.

"[Statutory maternity leave] is 26 weeks or whatever, but within that period the employer has a right to pay the employee fully if they want to. A lot of employers don't do that but it depends, we have done that before for key employees... It's just like a good will gesture, really. It is a lot of money, but you think, 'Right, we are going to build on this together' – because you've got to think long-term, haven't you? We put a lot of money into getting people to that stage, and for us to bring someone else up and train them up to a level on the computer system or the software that we are using would be a nightmare. So that is what we've done." Group 2: small employers, Manchester

Where maternity benefits were increased beyond the statutory minimum, this usually took the form of an increase in pay rather than the length of leave, which was generally seen as quite long enough already.

4.2.2 The period prior to maternity leave

General issues

As discussed above, employers often reported that their first reaction on hearing an employee announce her pregnancy was a sense of resignation or shock, depending on whether or not this was a regular occurrence. After this first reaction, employers would look up their maternity policy (if they had one) and update it if necessary, and then either give a copy of the policy to the employee or talk through the main points with them. In part, the employer's response would partly be guided by the employee herself: how much she knew about her maternity rights and how 'difficult' she seemed likely to be.

WHAT HAPPENS FIRST?

"You say to them, 'Sorry, we only offer the statutory minimum, but here's a policy anyway. Obviously if you have any problems, let me know. Don't worry about anything, like if you need time off to attend ante-natal or so-called Parentcraft classes.'" Group 2: small employers, Manchester

For many employers, the only significant problem between the announcement of pregnancy and the start of maternity leave was the issue of time off for ante-natal appointments. Awareness of an employee's right to time off for these appointments was generally high, but several respondents were uncertain about the details: for example whether or not women were entitled to be paid for their time off; whether they could attend as many appointments as they liked; and whether or not men were also entitled to time off to accompany their partners.

"How much ante-natal care should they have? Do you just let them have whatever they want, or do you come down a bit harder?"

Group 2: small employers, Manchester

Some respondents alleged that their employees had taken advantage, either by claiming that they had an ante-natal appointment when they did not, or, more commonly, by arranging these appointments at inconvenient times or taking more time off than necessary.

"She was very well informed about what she could and couldn't do, to the point that I enforced my right to ask for an appointment card and to check appointments because a lot of time was being had off. We would be told that she had an appointment at 10 o'clock in the morning so there wasn't any point in her coming in at 9 because she had to travel, and it would be 2 or 3 o'clock that she might get in. I rang and checked a couple of times, and her appointment had been long over, but how do you prove that somebody is off shopping? Serious advantage was taken."

Group 1: small employers, Surrey

The majority of respondents appeared not to know that they had the right to check an employee's appointment cards if they wished, and most felt they would be unlikely to use this right. As discussed above, employers not only believed they had far fewer rights than their employees, but also found it difficult or distasteful to enforce them.

Women who had experienced maternity themselves were a little more likely to be understanding of employees taking time off to attend ante-natal classes.

"It is all about the experience of being pregnant. I myself remember, going back yonks ago, it is about the whole experience. You do want to go to your ante-natal appointments, and you are made to feel special."

"It is all about them enjoying the experience – that is what they want to do, they want to enjoy the experience of being pregnant."

"I went through my friend's pregnancy and it was really wonderful, and if you are a woman you can understand it. Whereas if I was a guy then I would

think, 'Flipping hell, how much more time [is she going to have off]?'."

Group 2: small employers, Manchester

Fewer employers considered absence through sickness a significant problem, but some had experienced difficulties. The main complaint was not that women experienced serious health problems and were forced to take lengthy time off, but that unscrupulous employees would falsely claim to be ill, using their pregnancy as an excuse.

"Some people do take the mick. I've had friends that have been pregnant and they've said they've got a headache or whatever. The other side of the coin as well is when they are due to come back to work and they say their back is playing up and they need more time off. That's a classic one."

Group 2: small employers, Manchester

Some employers were well versed in legislation on this issue and knew that they had to treat sickness differently if it was pregnancy-related, and that illness after a certain week of pregnancy could trigger the start of maternity leave. Others were less well-informed about the ins and outs of the legislation but nevertheless assumed that they had to tread more carefully than they would otherwise in dealing with absenteeism, because of the danger of being accused of discrimination.

One or two employers had experienced the opposite problem, whereby a pregnant employee was reluctant to take time off even when she was clearly not fit to be at work.

"The last girl who was pregnant was violently sick, and this poor girl, it was awful, when you are in the middle of serving a customer and you suddenly... We were saying, 'Go home' but she needed the money. We offered to give her money. You can't sack someone for that. It was really difficult for us because she spent the whole day sitting downstairs as green as anything and we didn't know what to do. We wanted to encourage her out of compassion, we said we would give her a week's paid leave so she could go home and see if it passed, but then you are frightened as to how she is going to interpret that."

Group 3: small employers, London

Health and safety

The issue of health and safety and the obligation to conduct a risk assessment was rarely raised spontaneously by respondents as a problem associated with maternity.

When prompted, only a minority of these respondents appeared to have conducted a risk assessment for their pregnant employee on a formal basis. These respondents were more likely to be those who worked in heavily regulated industries such as manufacturing: they were used to

carrying out risk assessments for their staff as a standard requirement; they were aware of their obligation to conduct a 'bespoke' assessment for pregnant employees; and they felt confident in their ability to do so.

"I suppose it's something that you've got to do anyway, you've got to do risk assessments if you're running a business, so the fact that you're doing one for maternity is not a great deal different, unless you've got to change something because of a risk being there."

Group 1: small employers, Surrey

"Immediately it's light duties. We remove people from working with high risk clients – prisoners and so on – because you don't know how any situation is going to escalate. So you have to remove the person from that situation because they can't be expected to get involved."

Group 2: small employers, Manchester

"None of that would be news to me because we have to deal with that kind of thing anyway – risk."

Group 2: small employers, Manchester

"I think employers have quite a big responsibility for pregnant women. You have to make sure it's safe for her and make sure that accidents don't happen."

"We wouldn't send anyone on [building] site for example, partly because of our insurance."

"I wouldn't let my pregnant nursery nurses carry equipment up and down the stairs [in case they] trip and fall."

Group 3: small employers, London

Others acknowledged that they had a general duty to protect health and safety at work, but seemed unaware of their specific responsibility to conduct a formal risk assessment for pregnant women (or indeed for other employees). They tended to view health and safety at work largely as a matter of common sense.

DO YOU KNOW WHAT THE LEGISLATION ACTUALLY SAYS?

"I have no idea, but employers will use their common sense. Also, every woman is different, it's an individual thing, so to try and put a guideline down is impossible."

Group 3: small employers, London

"I think it's all about taking care of yourself, and if you are knackered, go home. It's that simple really, isn't it?"

Group 2: small employers, Manchester

"Obviously she shouldn't be lifting anything, and if you are in that environment then that's common sense. If the employee feels difficult with anything in their normal daily role then you'd be doing that as a matter of course, really."

Group 2: small employers, Manchester

Others had little understanding at all of their obligations with regards to health and safety. In the past they seemed either to have been unaware of the issue or to have avoided engaging with it.

"When you ask who the health and safety officer is in our office, everyone scarpers!"

Group 2: small employers, Manchester

Where risk assessments had been carried out, employers appeared to have found the process relatively straightforward. Only one employer, a day-care centre owner with 13 employees, had experienced a particular difficulty in this area, when a member of staff had refused to stop working even though her risk assessment had flagged up potential problems. In this case the respondent seemed unaware of her potential obligation to suspend the woman on full pay. She was also unsure of her own rights to prevent the woman from working and wanted a return to the system of requiring pregnant women to have a doctor's certificate after a certain week of pregnancy to confirm their fitness to work.

"Where I think the difficulty is, is that they no longer need a doctor's certificate to say they're fit [to work]. It is very difficult and dangerous for her, but I can't persuade her to go because she needs the money and that's why she's staying on. She really can't do the complete work of a nursery assistant."

Group 3: small employers, London

When those who had not conducted a risk assessment were informed of the current legislation, many were perturbed to discover that they were obliged to carry out a formal assessment and appalled that they might have to suspend pregnant employees on full pay if there was no alternative work available. This was thought to be particularly onerous on very small companies which were by their nature less likely to have suitable alternative employment, and would be less able to afford a maternity suspension.

"The problem is the suspending on full pay. I know it's necessary, because obviously you've got no alternative work if you're a small company. If you have to suspend them on full pay then it would be a body blow, as you'd have to get someone else in. I'm not saying you shouldn't do it, but..."

Group 2: small employers, Manchester

"In our florist there's not really any other jobs we could move them to, if a risk assessment highlighted a problem. And there are lots of 'bad' things in a

florist – wet leaves on the floor, serrated cutters, things like that.”

Group 1: small employers, Surrey

“I’d [be happy to] do all that [risk assessment] up until the last point. A small organisation like me could never suspend a woman on full pay. I can’t afford it.”

Group 3: small employers, London

Respondents saw no solution to this issue: obviously pregnant women should not be forced to work in dangerous situations, but equally the legislation was burdensome for small employers. Some believed that if more employers fully understood their obligations under health and safety legislation and the responsibility to suspend on full pay if necessary, this would further deter companies from employing women of child-bearing age.

“What about the woman who works in a factory, where she is doing lifting? The employer is going to take the view, ‘Right, let’s not employ any women doing that job’.”

Group 2: small employers, Manchester

4.2.3 Maternity leave

As discussed above, employers typically found maternity leave the most significant problem with regard to managing pregnancy at work, and there was clearly a great deal of uncertainty and anxiety about how and when arrangements for maternity leave should be made. There was a good understanding of the basic structure of maternity leave: that is, that the large majority of employees are entitled to six months leave with pay (for more on Maternity Pay, see section 2.4 below) followed by a further six months unpaid. However, respondents were clearly much less well aware of the detail of their rights and responsibilities, and found it difficult to negotiate the issue with employees.

Employers tended to talk about maternity leave as an amorphous problem, but it is helpful for the purposes of reporting to break the issue down into its constituent parts.

Agreeing the timing of maternity leave

One particular area of uncertainty was the notification of when maternity leave would start and how long it would last. In some cases, it appeared that very few formal arrangements for maternity leave had been made when an employee became pregnant; the woman had perhaps set the date when she was intending to leave work, but had given no indication of whether and when she planned to return. Some employers seemed unaware that they had any rights to ask for this information.

Others knew that they had a right to make formal arrangements but felt uncomfortable enforcing these – whether because they felt this went against the friendly ethos of their company or because they felt this would

be an unreasonable imposition on a woman who might not yet know herself what she was intending to do. Others saw little point in making or relying on formal arrangements because the woman had the right to change her mind in any case about whether and when she was coming back to work. It was clear that in some cases respondents had simply waved their employee off on maternity leave and then waited for her to make contact.

"I have not agreed with this lady when she is coming back because she has a right to 12 months. Even if she came back and said, 'Well I'm not able to come back', then I would have to let that happen because she is allowed 12 months. That's my understanding."

Group 2: small employers, Manchester

"Normally you hear from them when the statutory maternity pay runs out."

Group 2: small employers, Manchester

This uncertainty about whether and when a pregnant employee would return to work was clearly a huge problem for employers. In very many cases respondents reported that employees had said they were going to return to work but had in the end decided not to. Some employers, particularly women who had themselves had children, were sympathetic to these changes of heart, but nevertheless acknowledged the difficulties they create for small businesses. Others tended to assume that pregnant employees had deliberately misled their employers.

"Interestingly enough, all the maternity cases that I've had in the last couple of years, every single one of the ladies has said that she's coming back, and I've not seen one of them. Now when they say they're pregnant and will be coming back I think, 'Oh really?'."

Group 1: small employers, Surrey

"They don't know how they are going to feel until the baby comes. They can tell you that yes, they'll be back in however many months, and then everything changes."

Group 2: small employers, Manchester

Employers regarded this as a difficult issue to resolve. Some criticised the fact that employees are now entitled to receive maternity benefits whether or not they return to work, believing that this will discourage women from coming back; while others thought that this will help encourage employees to be honest about their intentions.

"Now you can say, 'Well I am actually not going to come back to work', but still receive all your benefits."

"But that is a better situation because when I first started having children, everyone would say they

were coming back. Some would come back for a month and then leave."

Group 1: small employers, Surrey

Not all respondents seemed aware that employees not only have to set an expected date of return but also have to give their employer notice of any change to this date. Where this was known, some employers found these arrangements reasonable.

"You have to expect them to be off for a year – they are entitled to have a year off, and if you return after six months you are actually returning early, so you have to give 28 days notice that you're returning."

Group 1: small employers, Surrey

Others, however, either considered the required notice period insufficient or found it difficult to enforce.

"It is very difficult especially if it is the first baby – you don't know what you are going to be like when the first baby is born and you can't always decide. I think it is fantastic that you can have the extra six months if you want it. What I don't think is right is the notice period of when you want to come back. It is not a bad thing to have a year off and a lot of mums like that. It is the issue of the notice period that is difficult for me."

Group 3: small employers, London

This uncertainty was a more significant problem for employers than the length of maternity leave per se. The standard six months was generally accepted as a reasonable period of time for a woman to take off. Although some felt that the six months of additional maternity leave was too long and placed too much of a burden on employers, many reported that their employees chose not to take this extra period of leave, while others considered a year perfectly reasonable – as long as they were sure of an employee's intentions to return to work or not.

Arrangements for covering maternity leave

The reason this uncertainty about maternity leave caused such problems for employers was because it made the process of arranging cover for the employee's absence (or deciding not to do so) much more difficult. As identified in the EOC research (Tip of the Iceberg, 2004), the process of covering maternity absence was often thought to be the key difficulty for employers in managing pregnancy at work.

"Just in terms of people it causes problems. Not necessarily the legalities of it. It is mainly the fact that there is going to be a position there that we need to fill."

Group 2: small employers, Manchester

Employers described how, when an employee announces her pregnancy, they are immediately faced with a decision about how to cover her

absence. The first option was simply to 'struggle by' without recruiting anyone else to fill the employee's role. This was an option taken by many respondents, particularly those representing very small companies. The problem with this option was that other employees would have to increase their workloads to cover the absence, which had the potential to generate resentment within the company.

"It's the pressure, because depending on how long they are going to be off, you are putting extra pressure onto your other staff to cover."

Group 2: small employers, Manchester

Either that, or the company would have to reduce the amount of business it conducted, with the resulting reduction in turnover and potentially the long term loss of business and key clients.

"You don't know how much business you are losing because customers are not getting the service that they used to."

Group 1: small employers, Surrey

However, many employers saw no other option but to do this, because of the significant difficulties and expense involved in training replacement staff.

Example: A private healthcare company employing 45-50 employees does not recruit cover for maternity absences because it would take too long to recruit and train new staff.

"I think from an operational point of view it is very difficult to cover pregnancy. It depends how big your organisation is and how much you can soak it up and your ability to deal with it. I have worked in organisations that are big enough and organisations that are not big enough. In our organisation, depending on whereabouts the employee is in the system and where they are working, we wouldn't even look at trying to plug up the hole, because by the time you get security clearance and all the rest of it, it is just not worth the hassle, because security clearance can take anything up to three or four months. By the time you get someone who is secure to put into that environment, then you have to teach them the blurb and all the rest of it... We just go light instead. Not by choice, but just because, operationally, there is no other way for us to do it."

Group 2: small employers, Manchester

The other main option for employers was to hire somebody to cover the absence, but this in itself brought with it a whole raft of problems. First of all, the cost of placing a recruitment advertisement could be high, depending on the industry.

Example: A hotel employing 12 employees wasted £500 placing a recruitment ad which ultimately failed to secure any successful applications.

"I have got somebody leaving in three weeks time and it has cost me £500 to place an ad over the last two weeks to try and get someone to cover while she is away. I have had three people respond to those ads: I have seen one person who wasn't anywhere near what I need, and the other two people haven't responded to me when I have asked them in for an interview. I have only got three weeks left now to try and sort out cover. Only she does the job that she does, so there is nobody else here that could do it. I don't feel any animosity at all to her because it is her right to have a family, but in a business sense it does create major problems. "

Group 1: small employers, Surrey

If employers chose to hire a replacement, they also had to decide whether to advertise for a maternity replacement or for a full time member of staff. Employing a temporary replacement was easier in some ways, given that the employer would not be faced with the problem of what to do when the pregnant employee returned to work. However, employers complained that it was difficult to recruit for a temporary appointment because most potential candidates were looking for permanent jobs.

"It is very hard to employ someone to cover. Nobody wants to take a job when they know the person is coming back from maternity leave. They take the job and they know they are going to have go in six to eight months, and as soon as they get a more permanent offer they are off, so you are back to the beginning again. "

Group 3: small employers, London

Temporary staff were also thought to be less loyal to their employer and less committed to the job; in some cases they might not even stay until the end of the maternity leave. Moreover, if the employer had to pay to train a temporary member of staff then this was essentially money wasted because the replacement employee would only be in their new role for a short time.

Example: A retail business with 20 employees hires temporary staff to cover maternity absences but has difficulty finding the time and money to train them on the company's computer system.

"In a retail business, in my particular case, we have got a busy shop and it is very hard to have time to train people. With all the technology that is supposed to save us time you need time to learn how to use it. And you are not necessarily employing the brightest people. You have to have delightful people working for you, that is the skill they need, but when you sit them in front of a computer it will be very challenging, so they need help and training. From our point of view when we lose someone and have to replace them we have to go through the whole process again; and when you keep someone's job open, what happens when you take the person on and you have invested all that time? It is a nightmare. Fortunately for us, because we do cherish our staff, most of our staff have worked for us for a long time, so I am happy for them and I want them to come back. But it is the poor person that gets the job in the meantime that suffers." Group 3: small employers, London

"We have got maternity cover from an agency and hopefully we said that it will be a minimum period of 6 months, and it is maternity cover so the job only lasts as long as the person is off on maternity leave. But then [the temp] left at 4 months and got a permanent job so we were stuck. We'd spent so much time training them so we thought, 'Oh god it isn't worth it, we will just absorb it and wait and see'. But we still don't know when [the pregnant employee] is coming back; she may come back or she may not."

Group 2: small employers, Manchester

As a result of these difficulties, several employers had now started to employ permanent staff in order to cover maternity absences. There were thought to be numerous benefits in doing this: first, recruitment was easier and the new employee likely to be more committed; second, the company could potentially gain a valuable new member of staff; third, money spent on recruitment and training would not be wasted; and, finally, if the employee on maternity leave decided not to return to work then their position would already be filled.

"We started off my getting temporary staff, which is always a disaster because they have no sense of

loyalty. They say they can't come to work because they've got hay-fever, when they work in a chemist's shop! That sort of attitude. So now we end up taking someone on and keeping them for another 15 years! If they're good, we keep them."

Group 3: small employers, London

Even when a company decides to recruit a permanent member of staff, however, there are still costs and difficulties associated with training them quickly enough to cover the maternity absence effectively.

"It's taken me 30 years to gain my knowledge. I couldn't train somebody in six months to deal with the discerning clientele we have who are spending exorbitant amounts of money."

Group 1: small employers, Surrey

Recruiting permanent staff as maternity cover was not a viable option for smaller companies whose budgets were so tight that they could not afford an extra salary. Their difficulty was that, if they recruited a permanent member of staff and their pregnant employee decided to come back to work, then they would have to make one of the two employees redundant. Apart from the unfairness of this approach, there was some uncertainty as to what the legal position would be in this instance.

"What if I employ someone else and then the first lady comes back? Then I've got two managers: one who was my number two, and the other one who was trained up to be the number two, and I'm a small business – where is all that money coming from? It ain't there. So then I'm in the situation where I have to make someone redundant. And as soon as I do that, I'm going to be faced with an employment tribunal. Then you're into the time consumption, money, lawyers, worry, concern."

Group 1: small employers, Surrey

The magnitude of these problems was determined to a significant extent by the role and seniority of the employee taking maternity leave. Highly skilled employees who had worked in the same company for a number of years were particularly difficult to replace; employers often found it impossible to replace such employees with a temporary recruit, and the cost of lost business could be particularly high.

"Our projects have a long cycle. The average life of a project in our office is about three years and therefore you can move people around. So when you asked about your first gut response [to the announcement of a pregnancy] I would say it depends. Let's say one of the girls was a job runner – that's somebody that is really fronting the job. That is a difficult one to manage because clearly she's the first contact with the client. Let's say one of the other girls was not quite at that level and

therefore her job could be filled by [other colleagues] covering her work."

Group 3: small employers, London

All these problems were exacerbated by uncertainty as to when and whether the pregnant employee returned to work. It was highly frustrating for respondents when employees indicated a wish to return to work but then changed their mind, because if the employer had known that the employee on maternity would not return, they could then have immediately begun to look for a permanent replacement.

"The annoying thing is that they say they are coming back, but maybe they have no intention of coming back. You have to keep their job open, which is fair enough, but then you take on a series of temporary people and then they say they are not coming back. You think, 'If you had told me that 6 months ago I could have had someone decent doing the job'. It is very frustrating. I don't blame them, and I actually admire them for not coming back and being full time mums, but on the other hand I could have filled the job more easily."

Group 3: small employers, London

Some employers reported more positive experiences in managing maternity leave. In some cases this was attributed to having highly trained and very committed staff who were keen to return to their jobs after maternity leave.

"In our industry people have already invested a long time, seven years, in their education before they even begin to knock on our door, so most of them have some commitment to get experience. So most of the women who come to our employment have ambitions. Unless [the pregnancy] is unexpected or unplanned... Most of them are professional people and therefore they have a career path so there is a sort of responsibility to themselves."

Group 3: small employers, London

Others had taken steps to make the process of covering maternity leave a little smoother. One always ensured an overlap period between the pregnant employee going on leave and her replacement starting work, so that the original employee could hand over as much knowledge and expertise as possible. Measures such as these cost money, however, and constituted an additional expense for the employer.

"The reality with this situation of key members of staff getting pregnant is that if you know some time in advance that that person is going to be going on maternity leave, then in order to try and plug the gap you are actually looking to recruit and train up prior to their departure. So immediately you are carrying two salaries, and you're not getting any help from the government with that."

Group 1: small employers, Surrey

Others encouraged communication between the employee and employer during the period of leave. This not only enabled the employee to answer work-related questions that might arise in her absence, but also helped to keep her feeling involved in the company and therefore more likely to return.

"We tend to keep in touch with them via emails, phone calls and so on. We tend to do it so there is still the feeling that they are the employee and they have still got ownership of the company. We keep them up to date with what is happening, and if anything new is coming out, and if they want it then we will email anything to them. We try to do that so that when they come back they are not feeling as though they are coming back into a whole new organisation."

Group 2: small employers, Manchester

"I find they pop in occasionally. They are normally quite happy to come in and resolve things."

Group 3: small employers, London

One had made arrangements for the employee on maternity leave to work from home, so that she was able to start work again before she was ready to re-enter the office environment.

"The one that is on maternity leave at the moment is a real loss to us because she is just the right sort of person and is a good front person. Nevertheless we are becoming fully computerised and she can work at home so we can do some sort of back-up. So it really depends where they are in terms of the structure of the job. But if it is in the drafting areas or specification there is a certain amount of back up and things you can run from home, so it depends."

Group 3: small employers, London

Other employers reported little contact with their employees during maternity leave and were unaware that they had the right to get in touch with their staff.

Instances where maternity leave had directly benefited the employer were few and far between. One respondent reported that the temporary

absence of the head of his marketing department had given other employees an opportunity to develop and take on more responsibility.

"The lady who is pregnant is in charge of our marketing department, and when she was off it enabled some other people to grow, so it was interesting to see the dynamic change. Sometimes you think people are irreplaceable but actually it gave other people opportunities that maybe they wouldn't have got if she had been there for that period."

Group 3: small employers, London

This type of situation could throw up its own problems, however. If an employer realised during a maternity absence that the employee in question was not actually needed, would the company be within its rights to make her redundant?

"One thing that could arise is that you could actually find that when the person is not around, you don't really need them. How would you deal with that, because you can't sack them? If you make them redundant then you've got to make sure you've got a good reason."

Group 1: small employers, Surrey

4.2.4 Maternity pay

Most respondents were fairly well-informed about the legislation regarding Statutory Maternity Pay. The majority remembered that employees are entitled to receive 90% pay for the first six weeks, followed by approximately £100 per week for the following 20 weeks. Most were also aware that maternity pay could be reclaimed through the Inland Revenue, although a handful seemed unaware of this. Some did not know that, as small businesses, they were able to reclaim more than 100% of the cost of the maternity pay, nor that this was more than the amount reclaimable by larger companies.

"The accountant deals with it, but I just know that it is an expense that the company has to stand."

"You get it all back from the government. You claim it back from National Insurance contributions, don't you?"

"But it still costs the company money."

"Because we're small we claim it back 100%."

"Oh, can you?"

Group 2: small employers, Manchester

One or two were confused about the definition of Statutory Maternity Pay, believing that this referred only to the £102.80 per week for the last 20 weeks; they were aware that this could be reclaimed from the government but thought they had to pay the first six weeks themselves.

Maternity pay was rarely raised spontaneously as a problem or expense for small businesses, and only then by those who were not aware of their

right to reclaim the money. Otherwise, employers generally seemed happy to administer the payment of maternity pay and assumed that the process of reclaiming it was relatively painless; in most cases their accountant had done this for them.

"The person from payroll will phone up the Inland Revenue and find out how to do it."

Group 1: small employers, Surrey

"Small businesses like us get all the maternity benefits back so it is not really costing you anymore unless you give them a bit extra."

Group 3: small employers, London

Very few of these respondents had paid employees more than the statutory level of maternity pay. None did this as a matter of course, but one or two had done so in exceptional circumstances, for a particularly valued employee.

"I make allowances for my staff. I made it quite lucrative for my manager because she has put so much in for me, and when she comes back she will be very committed to work. Whereas for someone like the other girl I wouldn't be so generous."

Group 3: small employers, London

One respondent had given an employee full pay for the whole 26 weeks, on the basis that this generosity might encourage the employee to return, and that the cost of training someone new to replace her would have been considerably higher. Employers who had increased maternity pay believed that it could be particularly important for small companies to do this, because one valued employee could make such a huge difference to the fortunes of the business; however, it was simultaneously much harder for small outfits to afford this expense, because their margins were likely to be tighter.

Other employers felt that maternity pay was already sufficiently generous and that, in any case, they could not afford to increase it. Employers who were sceptical about the likelihood of their employees returning to work were particularly resistant to the idea of paying additional maternity benefit. Indeed, one disadvantage of increasing maternity pay was thought to be that it could potentially increase the chances of an employee lying about her intention to return to work, in order to secure the extra money.

4.2.5 The return to work

For the majority of employers, the issue of whether and when an employee would come back to work following maternity leave was the source of much greater difficulties than the return to work itself. Few mentioned this spontaneously as a source of concern, but, when prompted, several said that they had experienced problems in the past. Where difficulties had arisen, this was usually in relation to employees

asking for flexible or reduced hours, or to sick leave (whether because of the mother's illness or the child's).

The issue of flexible hours had only been a problem for one or two, who had felt forced to grant their employee's request but had found this difficult to accommodate.

"If you start looking at this, what is it, work-life balance thing, that can be harder to deal with. You have people wanting to come in at one time and go home at another, and then others saying, 'I will work these hours and I'll work those'. Sometimes you feel like saying, 'You're pregnant? Alright, love, off you go and we'll see you in 12 months'."

Group 2: small employers, Manchester

One employer reported that granting flexible hours to a new mother had caused resentment among other employees who also wanted flexible working patterns.

*"Then of course you have the problem when people come back and want reduced hours."
"Yes, and then everyone wants that."*

Group 2: small employers, Manchester

Others offered flexible hours to new mothers as a matter of course and found this quite easy to manage.

"My secretary was in a job-share for a while, and I had two ladies who had children and they were actually the most organised people, because they had to be. They didn't want a full time job but they were really happy to do a job-share which enabled them to get out and do stuff but not have the commitment of a full-time job."

Group 3: small employers, London

"We only pay the statutory but we are lenient in terms of flexibility, in that if you want to come back and only do half days we would be flexible with that."

Group 3: small employers, London

Illness of the child or mother following maternity leave had also caused problems for respondents. As with some other aspects of maternity, female respondents with children of their own tended to be more sympathetic to the mother's predicament, but nevertheless also appreciated the problems from a business point of view.

"I find that more pressing, when they come back from maternity leave and the children are ill. I mean, what can you do? There is nothing you can do. I've got children of my own."

Group 2: small employers, Manchester

"It is a problem for me when they want to come back, but it is a problem that I don't mind dealing with because I do firmly believe that if you have a child that child has to be the priority. If your child is sick you have to go to your child, I don't mind that but it does cause a lot of headaches. My staff get as much time off as they want."

Group 3: small employers, London

One or two believed that, as with other aspects of maternity, the protection offered by the legislation could encourage employees to take advantage of their employers.

"I think you have to come back for one day and then you have the right to take longer off with pay."

"If they come back for a day then they've returned to work, and then they could take sick pay."

Group 2: small employers, Manchester

Another felt that, even if new mothers did not actually take time off sick, they were less attentive at work and less dedicated to their job than before.

"They come back more mature, but they also come back a little more frazzled."

Group 3: small employers, London

There was also some uncertainty about the employer's rights and responsibilities with regard to the employee's return to work. One respondent wanted to know what would happen if the person employed to replace the woman on maternity leave turned out to be better at the job than the original employee.

"You don't get any benefit [from training up a maternity replacement]. Unless you get somebody better, and then you have a real problem."

Group 2: small employers, Manchester

Other potential costs and difficulties associated with an employee returning to work following maternity included the possible cost of retraining the individual if her role or the company itself had changed significantly during her absence. This cost was exacerbated now that maternity leave could last for up to a year.

"You have got major issues when someone comes back, you might have to retrain them. The job may have changed, you might have different people working, you might have formed a different pattern of how you do things, and that can create difficulties."

Group 1: small employers, Surrey

4.2.6 Other issues

The attitude of other staff

Few of these respondents had experienced significant difficulties regarding the attitude and behaviour of other staff towards pregnant employees and new mothers. In a minority of cases employers reported that other staff had felt resentful at having to take on extra work to cover for a woman on maternity leave or absent through sickness.

"It's all very well when they're pulling their weight and they're not off sick, then everything is fine. But the minute they start going off sick or something, then you get others saying, 'Well pregnancy isn't an illness', and, 'I've never had a day off sick', and that's when it all starts. It's fine as long as they are coming in every day."

Group 2: small employers, Manchester

One or two had experienced other difficulties, namely staff wanting to be given an opportunity for flexible working, or employees feeling resentful because a woman on maternity leave continued to benefit from the perks of her job.

"If they haven't got a company car, but she's driving a company car while she's not even working here."

Group 2: small employers, Manchester

In most cases these difficulties had not led to significant changes in maternity policy or in the way this was put into practice; but employers were aware that they had to tread carefully when dealing with these issues.

"It put a strain on them to cover the gap... I had to think diplomatically."

Group 1: small employers, Surrey

For the most part, though, employers reported that their other staff had been largely supportive of pregnant colleagues and returning mothers.

"I think my staff rally round pregnant women. They help out. With my present lady they bend over backwards to help her and I think that's rights. I would never discourage them from doing that."

Group 3: small employers, London

Paternity leave

The majority of these employers did not regard paternity leave as a significant issue. Most considered the right to one or two weeks paid leave as reasonable, and this did not impact too heavily on the business. Some actively welcomed the increased opportunity for fathers to get involved in parenting.

There was some evidence of confusion between paternity leave and unpaid parental leave; but, although the prospect of a father taking several weeks off work was perturbing, most thought that this was unlikely to happen in reality because employees were generally not interested in taking time off unpaid.

Some were also unclear about whether or not fathers were entitled to take time off during their partner's pregnancy to attend ante-natal classes, and, if so, whether this leave should be paid.

4.3 Information and advice on maternity issues

4.3.1 Information needs and sources of advice

The majority of respondents believed that information about maternity legislation was easy to come by and cited various sources for obtaining it (see further below).

"It's all there if you want to know it."

Group 2: small employers, Manchester

However, employers did not access this information on anything like a regular basis because they regarded their need for it as infrequent and sporadic. Most looked up the latest legislation only when a maternity occurred in their company and considered such information irrelevant the rest of the time. Moreover, the fact that many of these respondents were not completely au fait with the current legislation suggests that they had not necessarily informed themselves about their rights and responsibilities even when their latest maternity occurred.

When an employee announces her pregnancy, the information need for employers is for an authoritative, easily accessible summary of the current legislation, plainly written and avoiding jargon, which covers the main issues such as the length of leave and level of statutory maternity pay. These respondents were not, for the most part, Human Resources specialists, and most only wanted to access more detailed information when a question or dispute arose.

The majority of these employers used the internet as their main source of information. Many felt that the web had revolutionised the way they accessed employment information generally; now they could feel confident that within a few minutes they could access whatever information they needed. In the majority of cases, when their most recent instance of maternity had occurred, they or a colleague had looked at the latest maternity legislation online in order to check that their policy was up to date and that they were 'covered' as far as the law was concerned.

"You have to look it up every time... You would always look it up because [maternity legislation] is changing every year."

Group 1: small employers, Surrey

In spite of the dominance of the internet, respondents were also receptive to the idea of receiving a paper booklet that summarised maternity legislation in a concise way, as a source of reference. For this purpose, the format of the small Acas booklets was well received (see section 3.2 below). It is likely, however, that employers would still feel the need to check online that the information was up-to-date.

The availability of information via the internet also meant that employers could now get the information they needed for free. The majority felt that, these days, there was no need for employers to pay for advice from a solicitor or accountant except in the case of a complex query or dispute with an employee. However, a handful of these respondents were still using paid-for sources to obtain information, apparently through habit and an unwillingness to spend time looking up information themselves. Usually this was an accountant or lawyer, although one respondent was paying an agency to keep his employment policies up-to-date.

Other sources used for information about maternity included: Business Link; the Chamber of Commerce; the DTI website; the Equal Opportunities Commission; the Health and Safety Executive; the CIPD; and Acas (see section 3.2 below).

Employers believed they had little in the way of unfilled information needs. One who was unaware of the Acas-run Tiger website called for a resource such as Tiger already provides: that is, a facility for the employer to input the basic details of their employee's maternity and receive in return a timetable of what needs to be done when and which benefits the employee is entitled to. When this was suggested, other respondents also thought it would be useful.

"I hadn't thought about it before, but what would actually work quite well is if you could email the Inland Revenue some brief details of the person, the dates, the age or whatever is relevant, and back comes a written response which would be your guide. You could print it out and pin it up... They would calculate the money and when you pay it."

Group 1: small employers, Surrey

4.3.2 Acas

There was a further short discussion on respondents' perceptions and use of Acas. Those who had used the service were universally positive; they had found Acas informative, comprehensive, impartial and helpful.

Non-users of Acas had mixed views of the organisation. A sizeable minority appeared to have a somewhat outdated view of Acas, associating it with the arbitration of major industrial disputes and regarding it as being on the side of the employee or the union, rather than the employer.

"[I associate them with] the rail strikes. If you've got to the point when you are using them then probably things aren't running smoothly!"

Group 3: small employers, London

Users, and some non-users, were aware of more recent changes to the image and remit of Acas and were quick to dispute this view. They described Acas as an impartial service which could be trusted to represent the views of employers and employees equally.

"I think in the 60s it was thought to be pro-employee but now they've decided to sort of sit in the middle."

Group 2: small employers, Manchester

"There is no need to be frightened of Acas any more. They are very straight with you, and they will even tell the employee that they're wrong and the employer is right."

Group 2: small employers, Manchester

Those who had used Acas to access information and advice knew that its reputation was strong in this area. Those who had not, tended to associate it more with arbitration and mediation than with information provision. A few respondents were aware that Acas also offers training for employers.

"They are there for guidance. They can liaise between you and an employee if you have a dispute with them, but they can give you the guidelines as to how you should deal with all HR issues correctly to avoid getting into disputes. They do a lot of negotiating, and a lot of tribunals try to get you to go to Acas first."

Group 1: small employers, Surrey

Respondents were generally amenable to using Acas (more often) in future, including with regards to maternity issues. The examples of web-pages and booklets shown during the discussions were generally well-regarded; they seemed to provide a basic outline of maternity legislation with pointers of where to obtain further information, which suited the needs of most of these employers. They were plainly written, well-spaced and seemed to avoid jargon. The only criticism was that the layout of the booklets appeared a little dull and un-designed, a little too basic. The prospect of being able to ask advice via a helpline was also well-regarded.

"As an example, if you wanted to know how to get rid of somebody, because it is difficult to get rid of somebody these days, you could perhaps go to them and say, 'Listen, we have done this and I have actioned it by doing this, now how do I stand?', and they will tell you, 'Listen, you go down that path' or whatever."

Group 2: small employers, Manchester

There was less interest in training on maternity issues. Most felt that this would be overkill, given that their companies did not have a dedicated HR function and only experienced maternities relatively rarely.

The provision of an Acas mediation service to assist in situations where there is a dispute between parties concerning maternity was also discussed. This is one proposal put forward in the EOC's *Tip of the Iceberg* report referenced earlier. Since none of the employers had experienced maternity situations resulting in some form of grievance or dispute, none felt able to speculate on their likely use of such a service. However, equally there was no in-principle opposition to this idea. Indeed, some recognised that Acas would be their first port of call in case of a problem. Whilst the employers appreciated in principle the benefits of using a mediation service in the hope of averting a tribunal, most hoped that they would be able to resolve any disputes before they reached this stage. The general perception was that, if the Acas mediation service was involved, then the situation must already be quite serious. This was particularly the case among those who still associated Acas with strikes and major disputes.

"I would think I had failed miserably with an employee that we had had for a long time if we had to bring in some guy to try and mediate over something."

Group 3: small employers, London

"I would rather have Acas sort something out than go to a tribunal, because it would be a very unbiased opinion. And it's very informal, and I think if you can sort it out at that stage then I think you would probably do much better."

Group 1: small employers, Surrey

Appendix

COI/ACAS616

SEPTEMBER 2004

CONTACT QUESTIONNAIRE

Name:

.....

Address:

.....

.....

.....

..... Tel:

.....

.....

HELLO, I WORK FOR A MARKET RESEARCH COMPANY CALLED CRAGG ROSS DAWSON AND WE ARE CARRYING OUT SOME RESEARCH ABOUT EMPLOYMENT POLICIES. MAY I ASK YOU A FEW QUICK QUESTIONS?

Q1 Please could you tell me the name of the company you work for and the nature of its business? WRITE IN BELOW.

Name of company:

Nature of business:

PLEASE RECRUIT A MIX OF ORGANISATIONS IN TERMS OF THEIR NATURE OF BUSINESS.

Q2 And approximately how many employees are there in your organisation?

- Under 5 () CLOSE
- 5-14 ()
- 15-29 ()
- 30-50 ()
- 51-100 () CLOSE
- More than 100 () CLOSE

ALL RESPONDENTS SHOULD BE FROM COMPANIES WITH BETWEEN 5 AND 50 EMPLOYEES. PLEASE RECRUIT A SPREAD IN TERMS OF COMPANY SIZE WITHIN THIS RANGE. TO Q3 IF APPROPRIATE.

Q3a What is your job title? WRITE IN BELOW.

Job title:

TO Q3b

Q3b Are you responsible for making decisions on any of the following issues?

- Employment ()
- Maternity policy and/or managing pregnant employees ()
- Employee benefits ()
- Business development ()
- Information technology purchase decisions ()
- Other financial decisions ()

ALL MUST BE RESPONSIBLE FOR MATERNITY POLICY AND/OR MANAGING PREGNANT EMPLOYEES. THE POSITION OF THE PERSON RESPONSIBLE FOR THESE ISSUES WILL VARY. IN SMALL COMPANIES IT IS LIKELY TO BE THE MANAGING DIRECTOR OR OWNER, LARGER COMPANIES MAY HAVE A HUMAN RESOURCES SPECIALIST. TO Q4 IF APPROPRIATE.

Q4 How many instances of maternity would you say you have dealt with in your company in the last 18 months?

- None () CLOSE
- 1 maternity ()
- 1-5 maternities ()
- 5+ maternities ()

ALL RESPONDENTS SHOULD HAVE DEALT WITH AT LEAST ONE MATERNITY IN THEIR COMPANY WITHIN THE LAST 18 MONTHS.

PLEASE RECRUIT A SPREAD IN TERMS OF THE NUMBER OF MATERNITIES RESPONDENTS HAVE DEALT WITH IN THE LAST 18 MONTHS.

'PREGNANCY AT WORK' RESEARCH – TOPIC GUIDE

Objectives

- to gain a better understanding of the experiences, knowledge and challenges facing employers when an employee becomes pregnant
- to assess employers' level of awareness of maternity legislation
- to find out where employers seek advice and information
- to seek ideas to facilitate the smooth handling of such cases

Introduction

Moderator to explain that the purpose of the research is to look at the experiences companies have had in managing pregnant employees. Reassure that the research is confidential and anonymous and that comments will not be attributed to individuals. Do not reveal Acas as the sponsor of the research at this stage.

Background

Brief account of organisation: size, area of industry, own role and responsibilities.

Employers' experiences: unprompted discussion

Ask respondents to remember back to the last instance of maternity they were involved in. Explore their experiences, focussing on the process rather than their attitudes in general.

- the employee announces her pregnancy: what were the first things to happen? What did they feel and do?
- encourage respondents to talk through the experience from the first announcement of pregnancy to the woman's return to work
- what were the key issues, opportunities and challenges faced at each stage? How did they handle these?
- does the company have a written policy in place to deal with maternity? Why/why not? If so, who developed this, why and when? What does it cover?

Employers experiences: prompted discussion

The order of the discussion will be dictated in part by employers' own priorities with regard to maternity issues. The moderator will ensure, however, that all the following points are covered at some point during the discussion.

For each of the following issues, explore:

- awareness and understanding of the rights and responsibilities of employers and employees
- how has the respondent handled this issue in the past? Any contractual or discretionary arrangements?
- what concerns and challenges have arisen?

First announcement of pregnancy

- notification period for start of maternity leave / SMP

Period prior to start of maternity leave

- health and safety at work (see also dedicated section below)
- leave for ante-natal care
- sickness during maternity

During maternity leave

- ordinary and additional maternity leave
- maternity pay (statutory and additional)
- contact with the employee
- cover during leave
- paternity leave (note any confusion with parental leave, but do not prompt)

Return to work

- conditions on returning to work
- absences: implications and arrangements

General issues

- behaviour and attitude of co-workers to pregnant employees (throughout maternity and following return to work); to what extent does this influence maternity policy and how it is put into practice?
- employing women of child-bearing age:
 - what do they think other companies in their sector think and do with regard to this issue? Do they believe it influences their decisions with regard to hiring new employees?
 - to what extent is it a consideration within their own company? Rationale.

- what age range do they consider to constitute 'child-bearing age'? Are there any other factors that impact on perceptions of how likely a potential employee is to get pregnant?

Issues to explore in more detail

Costs

What do respondents regard as the actual financial costs associated with handling maternity cases? Explore fully, then probe on the following:

- ordinary and additional maternity leave
 - awareness and understanding – how long, who is eligible, notification rights and responsibilities, rights of employee while she is on leave
 - what costs accrue as a result of maternity leave? Explore fully, then prompt: recruitment for cover, training replacement staff, other general costs of the employee being absent
- statutory maternity pay:
 - awareness of level of SMP
 - awareness that SMP can be recovered
 - understanding of rules governing recovery of SMP (percentage that can be recovered and how this varies according to size of business)
 - understanding of arrangements for recovering SMP
 - experiences of recovering SMP, including timing; awareness that this can be done in advance
- additional maternity pay
 - their company's policy
 - rationale for policy (offering vs. not offering, any determining circumstances)
- suspension of employee on health and safety grounds (see also below)

What (if any) steps have employers taken to minimise these financial costs? Are there any improvements that could be made to the system to minimise the costs of maternity for employers?

Health and safety

Explore issues surrounding health and safety, including:

- awareness of employers' responsibility to carry out a health and safety assessment for pregnant employees; how have respondents found out about this responsibility?
- experiences in this area: has this assessment been done? If so, when, how and by whom? If not, why not? How confident do employers feel about carrying out such assessments? Have they sought information and advice? If so, where from and why?
- are they aware of what they need to do if the health and safety assessment identifies risks? (i.e. alternative work or suspension on full pay)

Information and advice

Access to information and advice and sources used would be discussed throughout the session, in relation to the topics above. The moderator would ensure that the following issues are covered:

What kind of information and advice is needed and sought when an employee becomes pregnant? How much detail do respondents want? What have their experiences been of seeking advice in the past?

How confident do respondents feel in accessing information and advice? Rationale.

What sources of information and advice have been used in the past in relation to maternity? For each:

- nature of enquiry – why was information/advice being sought?
- how was contact made? (in person, by phone, email, web)
- rationale for using this particular source in this instance; explore unprompted, then probe on convenience, trust, perceived expertise, cost etc

Are respondents familiar with the Tiger website? If so, how useful have they found this? Are they aware of its provenance?

Do respondents have a default source of advice? If so, who and why?

To what extent is cost an influence? Have employers paid for information and advice in the past? What differences (if any) do they perceive between free and paid-for advice? Rationale for using one vs. the other.

In what format do they prefer to receive information about maternity? Probe on hard copies; PDF/electronic document; delivery (on the web vs. downloadable vs. by email)

Acas

Moderator to explain that the research is being conducted on behalf of Acas. Moderator will have copies of Acas publications and print-outs from the website to use to prompt discussion, as appropriate.

Awareness and perceptions of Acas:

- what is Acas? What does it do? Who uses it?
- where does Acas come in with regard to maternity issues? Who do they imagine uses it in this context? What for?
- understanding of the services Acas provides. Probe on awareness and appeal of:
 - information and advice (via telephone helpline, internet)
 - training sessions on maternity issues
 - written publications (hard copy and internet)
 - mediation
- have they used Acas in the past as a source of information? Explore experiences.
- would they consider using Acas in the future as a source of information? Rationale. What would they see as the advantages or disadvantages of using Acas (e.g. perceptions of expertise, cost, independence)? What type of information might they seek from Acas? Rationale.
- explain that Acas might start providing mediation in disputes surrounding maternity. What do respondents think of this proposal? What do they understand by the term 'mediation'? What do they imagine it involves? How likely would they be to turn to Acas in the event of a dispute? How would they feel about an Acas representative coming into their company to mediate between them and an employee? What would they regard as the advantages and disadvantages of this? Rationale.

Summing up

What do they feel are the most important things that they have discussed and learnt in the course of this discussion?

What are the key things that could be done to help employers manage issues surrounding maternity? What are their main needs in terms of information and advice? What role can Acas play in meeting these needs?

THANK AND CLOSE. EXPLAIN AND DISTRIBUTE CONSENT FORMS FOR FUTURE CONTACT.